

BEFORE THE
DEPARTMENT OF INSURANCE
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of:

SEUNG HWAN LEE,

Respondent.

File No.: LBB 4023-AP (AR)

OAH No.: L2008040125

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on June 3, 2008.

Darrel Secrest, Staff Counsel, represented the Complainant.

Respondent appeared in person and represented himself.

Oral and documentary evidence was received and the matter then argued and thereafter submitted.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties

1. Steve Poizner, the Insurance Commissioner of the State of California, brought the Statement of Issues in his official capacity.

2. On February 7, 2007, Respondent Seung Hwan Lee, filed an application with the Insurance Commissioner for a license to act as a fire and casualty broker-agent in the State of California. The application is now pending, and no license has been issued pursuant to that application.

Disclosure

3. On February 7, 2007, Respondent filed the application for an insurance license referred to in Finding 2. Question No. 1, on Respondent's application reads:

"Have you ever been convicted (please read definition of crime below before answering) of, or are you currently charged with, committing a crime, whether or not adjudication was withheld? 'Crime' includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations and juvenile offenses. 'Convicted' includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, having had any charge dismissed or plea withdrawn pursuant to Penal Code section 1203.4 or having been given probation, a suspended sentence or a fine."

Respondent answered "No" and failed to reveal the conviction set forth in Finding 4. At the time he filled out the application Respondent – despite the clear language of the interrogatory – was under the good-faith but mistaken belief that the crime had been committed when he was 18 years old, was remote and was not a felony and, therefore, did not have to be disclosed. The failure to fully disclose at the outset, on the application, was a lack of due diligence by Respondent – given the remoteness of the conviction – and not the result of willfully or knowingly making a false statement of fact required to be revealed in the application. The Department makes no adverse allegation for failure to disclose the DUIs set forth in Findings 5 and 6 in that the DUIs constitute misdemeanor traffic citations.

Criminal Convictions

4. On July 30, 1994, Respondent and his sister – then teenagers – had a verbal argument, while watching television, which escalated into a physical confrontation. Upon hearing the commotion, a neighbor called the police. The police responded and arrested Respondent. Thereafter, on August 30, 1994, in Case No. 212104 CLS, in the District Court of Clark County, State of Washington, Respondent was convicted upon a plea of guilty of assault in the fourth degree, a violation of section 9A.36.041.DV of the Revised Code of Washington, a misdemeanor.

5. On August 14, 2000, while a college student, Respondent was arrested by campus police while driving under the influence of alcohol after attending a school party. Thereafter, on January 8, 2001, in Case No. 0WL03113, in the Superior Court of Los Angeles, Airport Courthouse, State of California, Respondent was convicted upon a plea of nolo contendere of driving with 0.08% or more alcohol in his blood (BAC)¹, a violation of Vehicle Code section 23152, subdivision (b), a misdemeanor.

6. On December 14, 2004, after attending a company meeting, Respondent drank wine to excess and was subsequently arrested while driving under the influence of alcohol. Thereafter, on April 29, 2005, in Case No. 4MT12428, in the Superior Court of Los Angeles County, Metropolitan Courthouse, State of California, Respondent was convicted upon a plea of nolo contendere of driving with 0.08% or more alcohol in his blood (BAC), a violation of Vehicle Code section 23152, subdivision (b), a misdemeanor.

7. None of the misdemeanors, by the facts and circumstances, constitute a crime involving moral turpitude. They do, however, all involve antisocial behavior. The conduct set forth in Findings 5 and 6, creates the risk of death or injury to oneself and to others. The conduct set forth in Finding 4 involves potential injury to another. The misdemeanors, when combined, constitute multiple convictions which demonstrate a pattern of repeated and willful disregard of the law. Accordingly, the misdemeanors are substantially related to the qualifications, functions and duties of an insurance agent.²

Rehabilitation

8. Respondent has timely completed all court imposed sanctions as a result of the misdemeanors and has successfully and timely completed probation. Since the time of the 2005 conviction Respondent has been in conformity with society's rules and norms. He has suffered no other conviction.

9. Respondent is presently employed by CAL-KOR Insurance Services in Los Angeles and has been so employed for four years. He has worked, and works, for his employer with honesty, industry and fealty. His supervisor Harry Kim, by letter, attested to Respondent's dedication to his work and to his knowledge of the insurance industry.

10. Respondent has completed the educational requirements for a Bachelor's Degree in Business Administration from California State University, Long beach. He has successfully completed fifty two hours of pre-licensing instruction. Respondent, therefore, has completion of training courses and formal education for economic self-improvement.

¹ Blood alcohol content (BAC) or blood alcohol concentration is the concentration of alcohol in blood. It is usually measured as mass per volume. For example, a BAC of 0.02% means 0.2% grams of alcohol per 100 grams of individual's blood, or 0.2 grams of alcohol per 1000 grams of blood.

² See California Code of Regulations, title 10, section 2183.2, subdivision (b) (8).

11. Respondent retains a close relationship with his parents and with brother and sister. He does fulfill all familial obligations and has stability of family life.

12. As a result of the 2005, DUI Respondent's driving privileges were suspended for eighteen months. Since the time of that conviction he no longer abuses alcohol and his driver's license has been reinstated. Respondent's family provides emotional support to Respondent and has helped him to avoid any further alcohol-related conviction.

13. Respondent was open and honest in his testimony and has a change in attitude from that which existed at the time of his last, wrongful misconduct in 2005. That change was brought about by Respondent's contrition and remorse and by Respondent's subsequent maturation during the course of his employment with CAL-KOR. Respondent's change in attitude was evidenced by the credible testimony of Respondent's and the credible documentary evidence from Respondent's supervisor at CAL-KOR.

LEGAL CONCLUSIONS

Applicable Law

1. Insurance Code section 1666 provides:

Upon the filing of an application for a license in accordance with Article 4 of this chapter, the commissioner may make such investigation and require the filing of such supplementary documents, affidavits and statements as may be necessary to obtain a full disclosure of such information as will aid him in determining whether the prerequisites for the license have been met. If the applicant makes a showing satisfactory to the commissioner that he meets all such prerequisites, the commissioner, if the applicant be eligible therefore, may issue a certificate of convenience, and upon the applicant meeting any applicable examination requirements may issue a permanent license.

2. Insurance Code section 1668 provides in pertinent part:

The commissioner may deny an application for any license issued pursuant to this chapter if:

- - -

- (b) The granting of the license will be against public interest;

- - -
- (h) The applicant has knowingly or willfully made a misstatement in an application to the commissioner for a license, or in a document filed in support of such an application, or has made a false statement in testimony given under oath before the commissioner or any other person acting his stead;
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3. Insurance Code section 1742 provides:

When a person who is or has been licensed under this chapter has been found by the commissioner to have violated any provision of this code which would justify the suspension or revocation of a license held, or where a person is applying for a license under this chapter and there exists grounds for the denial by the commissioner of his application, the commissioner may, after hearing, revoke the license held or deny the application for an unrestricted license, and commissioner may impose any reasonable conditions upon the acquisition of such restricted license or the conduct of the holder thereof. The holder of the restricted license has no property right therein and the commissioner may, with or without either hearing or cause, suspend or revoke a restricted license. If a hearing is held under this section, it shall be conducted in accordance with Chapter 5, Part 1, Division 3, title 2 of the Government Code. The holder of a restricted license is subject to all of the provisions of this Code and such license shall be kept in force and renewed in the same manner, at the same time, and subject to the same conditions and fees as are applicable to an unrestricted license to act in the same capacity.

Application of law to facts

4. Findings 4, 5, 6 and 7, show that it would be against the public interest to permit Respondent to transact insurance in the State of California and constitutes grounds for said Insurance Commissioner to deny the pending application of Respondent pursuant to Insurance Code section 1668, subdivision (b).

5. Respondent has not knowingly or willfully made a misstatement in an application to the Insurance Commissioner by reason of Finding 3 and, therefore, cause does not exist for the Insurance Commissioner to deny the pending application of Respondent, pursuant to the provisions of Insurance Code section 1668, subdivision (h).

Disposition

6. Respondent has, by his recent efforts of self-discipline and perseverance, established a record of clear and convincing rehabilitation. He is now leading a socially and professionally responsible life. Respondent is, presently, a person of integrity and is of good character. Accordingly, licensure of Respondent in a restricted status, to allow Respondent to work for a short period of time under supervision, is consistent with the public interest. Respondent is qualified for the license for which he has applied, on a restricted status, as provided for in Insurance Code section 1742.

ORDER

Pursuant to California Insurance Code section 1668, Division (b), Respondent's application for unrestricted license and licensing rights to act as a fire and casualty broker-agent is hereby denied.

It is further ordered that there be issued to Respondent, Seung Hwan Lee, upon Respondent's compliance with all statutory and regulatory requirements, a restricted license to act as a casualty broker-agent, pursuant to the provisions of California Insurance Code section 1742, and subject to the following conditions and restrictions:

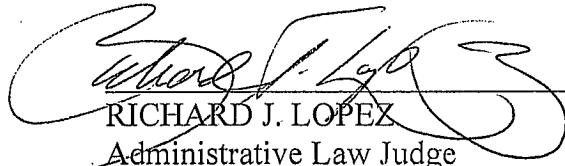
1. Respondent shall obey all laws and regulations of the State of California, the United States of America, and every state and foreign government (and political subdivision thereof) having jurisdiction over Respondent.

2. Respondent shall submit to the Insurance Commissioner a statement signed by any employing insurance agent, certifying that the employer has read the decision of the Commissioner granting the restricted license, and that the employer will exercise close supervision over the activities for which an Insurance License is required.

3. Respondent shall not be eligible to apply for removal of restrictions, and for the issuance of an unrestricted license, until two (2) years have elapsed from the effective date of issuance of the restricted license to Respondent.

4. After two (2) years have passed, the Insurance Commissioner may, at his discretion, and upon petition by the Respondent, remove the restrictions from Respondent's license, provided the Respondent has not been convicted of any subsequent crime, nor been subject to any disciplinary action.

Dated: June 24, 2008


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm